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SENATE BILL 167

46TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2004

INTRODUCED BY

Manny M Aragon

AN ACT

RELATING TO CRIMINAL LAW; AMENDING THE POSTING AND NOTICE
REQUIREMENTS FOR CRIMINAL TRESPASS; REQUIRING A HUNTER OR
FISHER TO HAVE WRITTEN PERMISSION TO HUNT OR FISH ON POSTED
PRIVATE PROPERTY; PROVIDING FOR CONFISCATION OF GAME OR FISH.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 17-2-7 NMSA 1978 (being Laws 1931,
Chapter 117, Section 8, as amended) is amended to read:

"17-2-7. UNLAWFUL HUNTING OR FISHING. --

A. Except as permitted by ~~regulations~~ rules
adopted by the state game commission or as otherwise allowed by
law, it is unlawful to:

- (1) hunt, take, capture, kill or attempt to
take, capture or kill, at any time or in any manner, any game
animal, game bird or game fish in the state; ~~or~~

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1 (2) possess, offer for sale, sell, offer to
2 purchase or purchase in the state all or any part of any game
3 animal, game bird or game fish; or

4 (3) hunt, take, capture, kill or attempt to
5 take, capture or kill, at any time or in any manner, any game
6 animal, game bird or game fish in the state on private property
7 without written permission of the owner or person in control of
8 the property if the property has been posted pursuant to
9 Section 30-14-1 NMSA 1978. Any game animal, game bird or game
10 fish taken, captured or killed on posted private property
11 without written permission shall be confiscated. A person who
12 has in his possession a valid landowner permit is considered to
13 have written permission from the landowner.

14 B. Notwithstanding any other law, the owner of
15 domestic livestock in this state or his regular employee may
16 hunt, take, capture or kill any cougar or bear which has killed
17 domestic livestock. The owner of livestock or his regular
18 employee who takes action under this provision [~~will~~] shall
19 report this action to the department of game and fish, [~~who~~
20 ~~will~~] which shall verify the necessity of the action taken.

21 C. Violation of this section is a misdemeanor and
22 shall be punished as provided in Section 17-2-10 NMSA 1978.

23 D. The provisions of this section shall not be
24 deemed to prohibit the possession of game animals, birds or
25 fish taken legally in any other jurisdiction. "

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1 Section 2. Section 30-14-1 NMSA 1978 (being Laws 1963,
2 Chapter 303, Section 14-1, as amended) is amended to read:

3 "30-14-1. CRIMINAL TRESPASS. --

4 A. Criminal trespass consists of knowingly entering
5 or remaining upon fenced or posted private property without
6 possessing written permission from the owner or person in
7 control of the land. The provisions of this subsection do not
8 apply if:

9 (1) the owner or person in control of the land
10 has entered into an agreement with the department of game and
11 fish granting access to the land to the general public for the
12 purpose of taking any game animals, birds or fish by hunting or
13 fishing; or

14 (2) a person is in possession of a landowner
15 license given to him by the owner or person in control of the
16 land that grants access to that particular private land for the
17 purpose of taking any game animals, birds or fish by hunting or
18 fishing.

19 B. Criminal trespass also consists of knowingly
20 entering or remaining upon the unposted lands of another
21 knowing that such consent to enter or remain is denied or
22 withdrawn by the owner or occupant [~~thereof~~] of the lands.
23 Notice of no consent to enter unposted private property shall
24 be deemed sufficient notice to the public and evidence to the
25 courts, by [~~the posting of the property at all vehicular access~~

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1 ~~entry ways]~~ the written communication by the owner, lessee,
2 person in lawful possession or his agent or by the existence of
3 fencing or other enclosure obviously designed to exclude
4 intruders or to contain livestock.

5 C. Criminal trespass also consists of knowingly
6 entering or remaining upon lands owned, operated or controlled
7 by the state or any of its political subdivisions knowing that
8 consent to enter or remain is denied or withdrawn by the
9 custodian [~~thereof~~] of the lands.

10 D. Any person who enters upon the lands of another
11 without prior permission and injures, damages or destroys any
12 part of the realty or its improvements, including buildings,
13 structures, trees, shrubs or other natural features, is guilty
14 of a misdemeanor and [he] shall be liable to the owner, lessee
15 or person in lawful possession for civil damages in an amount
16 equal to double the value of the damage to the property injured
17 or destroyed.

18 E. Whoever commits criminal trespass is guilty of a
19 misdemeanor. Additionally, any person who violates the
20 provisions of Subsection A, B or C of this section, when in
21 connection with hunting, fishing or trapping activity, shall
22 have his hunting or fishing license revoked by the state game
23 commission for a period of not less than three years, pursuant
24 to the provisions of Section 17-3-34 NMSA 1978.

25 F. Whoever knowingly removes, tampers with or

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1 destroys any "no trespass" sign is guilty of a petty
2 misdemeanor; except when the damage to the sign amounts to more
3 than one thousand dollars (\$1,000), he [~~or she~~] is guilty of a
4 misdemeanor and shall be subject to imprisonment in the county
5 jail for a definite term less than one year or a fine not more
6 than one thousand dollars (\$1,000) or to both such imprisonment
7 and fine in the discretion of the judge.

8 G. This section, as amended, shall be published in
9 all issues of "Big Game Hunt Proclamation" as published by the
10 department of game and fish. "

11 Section 3. Section 30-14-1.1 NMSA 1978 (being Laws 1979,
12 Chapter 186, Section 2, as amended) is amended to read:

13 "30-14-1.1. TYPES OF TRESPASS--INJURY TO REALTY--CIVIL
14 DAMAGES. --

15 A. Any person who enters and remains on the lands
16 of another after having been requested to leave is guilty of a
17 misdemeanor.

18 B. Any person who enters upon the lands of another
19 when such lands are posted against trespass [~~at every roadway~~
20 ~~or apparent way of access~~] is guilty of a misdemeanor.

21 C. Any person who drives a vehicle upon the lands
22 of another except through a roadway or other apparent way of
23 access, when such lands are fenced in any manner or posted, is
24 guilty of a misdemeanor.

25 D. In the event any person enters upon the lands of

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1 another without prior permission and injures, damages or
2 destroys any part of the realty or its improvements, including
3 buildings, structures, trees, shrubs or other natural features,
4 he shall be liable to the owner, lessee or person in lawful
5 possession for damages in an amount equal to double the amount
6 of the appraised value of the damage of the property injured or
7 destroyed. "

8 Section 4. Section 30-14-6 NMSA 1978 (being Laws 1969,
9 Chapter 195, Section 2, as amended) is amended to read:

10 "30-14-6. NO TRESPASSING NOTICE--SIGN CONTENTS--POSTING--
11 REQUIREMENT-- [~~PRESCRIBING A PENALTY FOR~~] WRONGFUL POSTING OF
12 PUBLIC LANDS--PENALTY. --

13 A. The owner, lessee or person lawfully in
14 possession of real property in New Mexico, except property
15 owned by the state or federal government, desiring to prevent
16 trespass or entry onto the real property shall [~~post notices~~
17 ~~parallel to and along the exterior boundaries of the property~~
18 ~~to be posted, at each roadway or other way of access in~~
19 ~~conspicuous places, and if the property is not fenced, such~~
20 ~~notices shall be posted every five hundred feet along the~~
21 ~~exterior boundaries of such land.~~

22 B. ~~The notices posted shall prohibit all persons~~
23 ~~from trespassing or entering upon the property without~~
24 ~~permission of the owner, lessee, person in lawful possession or~~
25 ~~his agent. The notices shall:~~

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- 1 ~~(1) be printed legibly in English;~~
- 2 ~~(2) be at least one hundred forty four square~~
- 3 ~~inches in size;~~
- 4 ~~(3) contain the name and address of the person~~
- 5 ~~under whose authority the property is posted or the name and~~
- 6 ~~address of the person who is authorized to grant permission to~~
- 7 ~~enter the property;~~
- 8 ~~(4) be placed at each roadway or apparent way~~
- 9 ~~of access onto the property in addition to the posting of the~~
- 10 ~~boundaries; and~~
- 11 ~~(5) where applicable, state any specific~~
- 12 ~~prohibition that the posting is directed against, such as "no~~
- 13 ~~trespassing", "no hunting", "no fishing", "no digging" or any~~
- 14 ~~other specific prohibition]~~ provide annual published notice
- 15 that trespass or entry is forbidden without permission of the
- 16 owner, lessee, person in lawful possession or his agent.

17 B. For the purposes of this section, "notice"

18 means:

- 19 (1) written communication by the owner,
- 20 lessee, person in lawful possession, his agent or someone with
- 21 apparent authority to act for the owner;
- 22 (2) fencing or other enclosure obviously
- 23 designed to exclude intruders or to contain livestock;
- 24 (3) a sign or signs posted on the property or
- 25 at the entrance to the building, reasonably likely to come to

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1 the attention of intruders, indicating that entry is forbidden;
2 or

3 (4) the placement of identifying orange paint
4 marks on trees or posts on the property, provided that the
5 marks are:

6 (a) vertical lines of not less than
7 eight inches in length and not less than one inch in width;

8 (b) placed so that the bottom of the
9 mark is not less than three feet from the ground or more than
10 five feet from the ground; and

11 (c) placed at locations that are readily
12 visible to any person approaching the property and no more
13 than: 1) five hundred feet apart on forest land; and 2) one
14 thousand feet apart or within line of sight of one another on
15 land other than forest land.

16 C. Any person who posts public lands contrary to
17 state or federal law or [~~regulation~~] regulation is guilty of a
18 petty misdemeanor. "

19 Section 5. EFFECTIVE DATE. --The effective date of the
20 provisions of this act is July 1, 2004.